

1 UNITED STATES OF AMERICA
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5 UNITED STATES OF AMERICA,)
6 Plaintiff,) Case No.
7 vs.) 5:07CR460-1
8 LONNIE RAY KERESTES,)
9 Defendant.)

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12 TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE
13 JUDGE CHRISTOPHER A. BOYKO, JUDGE OF SAID COURT,
14 ON MONDAY, AUGUST 11TH, 2008
15 COMMENCING AT 11:00 O'CLOCK A.M.

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P R O C E E D I N G S

THE COURT: Please be seated, ladies and gentlemen. Mr. Kerestes I see is present. Mr. Carlos Warner is here representing him; Mr. Michael Sullivan, Ms. Carol Skutnik on behalf of the Government; Mr. Allen Gold from probation.

We are here today for sentencing.
Mr. Warner, would you please go to the podium with Mr. Kerestes?

MR. WARNER: Thank you, your Honor.

THE COURT: Mr. Warner, I will start with you.

Have you received a copy of the presentence investigation report and had sufficient time to sit down with Mr. Kerestes and go over it in detail?

MR. WARNER: I have, your Honor.

THE COURT: Mr. Kerestes, I want to make sure you have had sufficient time to sit down with Mr. Warner, go over this presentence investigation report in detail, and have him answer any of your questions to your satisfaction.

Has that been done?

THE DEFENDANT: Yes, your Honor.

THE COURT: Okay. Mr. Warner, I will start

1 with you. Certainly, we have had a conversation in my
2 chambers, yourself, Mr. Sullivan, Ms. Skutnik, Mr. Gold
3 regarding various matters that were raised in the
4 presentence investigation report. I do have your
5 memorandum in aid of sentencing, which I have read.

6 I do have the psychological report from
7 Joseph Sharis and also, of course, the one from the
8 Department of Public Welfare and Family Services, I
9 should say, in Pennsylvania regarding the assessment made
10 on the allegation against Mr. Kerestes.

11 I have read everything, and please, if you
12 will, address the report itself and the objections you
13 may have, and we will take it from there.

14 Go ahead, Mr. Warner.

15 MR. WARNER: Thank you, your Honor. May it
16 please the Court, we did have a long conversation in
17 chambers about the objections we presented and preserved.
18 I will just briefly cover them, and I have a few exhibits
19 for what I will call a third objection. That goes
20 towards the pattern of abuse.

21 The three guideline objections, first of
22 all, is the denial of the acceptance of responsibility.
23 As we stated in our objections that are included in the
24 presentence report and in his acceptance that is in the
25 report, we believe he has fully accepted responsibility

1 for this offense.

2 Similar on obstruction of justice, you know,
3 we talked a lot about obstruction in the back. There
4 were three people in this interview. All three of us
5 were there, three people being myself, Mr. Gold, and
6 Mr. Kerestes. I don't believe that he obstructed
7 justice, and I don't think he lied to Mr. Gold at any
8 point.

9 Bottom line is that he has vehemently denied
10 ever abusing any of his children, especially the ones
11 that were the subject of this report. He said that to
12 Mr. Gold. Mr. Gold indicated at some point he thought
13 that Mr. Kerestes was not being honest.

14 There was a question about whether or not he
15 has ever had sex with a minor and whether or not --
16 Mr. Gold recollects the question with a minor, even when
17 you were a minor. I don't recollect that second clause.

18 I do recollect allowing him to answer that
19 question, even though I knew about these allegations from
20 Pennsylvania because Lonnie has been very firm in his
21 position then, now, and in the future; that he never did
22 anything to these children, and he is completely innocent
23 of it.

24 So I allowed him to answer that question.
25 Mr. Gold had some issue as to whether or not when he was

1 15 he had consensual sex with another 15 year-old and
2 whether or not that was lying. That's just frankly silly
3 because that's not what the -- it has no relevance at
4 all, and secondly, that's not how we recall the question.
5 So we don't think there has been any obstruction here.

6 Most importantly is the third objection, and
7 that's whether or not there was a pattern of abuse, and
8 what this Court is forced to do is determine whether or
9 not, based upon this non adversarial proceeding, that was
10 prosecuted for lack of a better word by a social worker
11 where Mr. Kerestes had no interaction at all with the
12 proceedings during a contentious divorce, where he had no
13 notice of report at all on this case, where he simply got
14 a letter, which I will submit to the Court as Defendant's
15 Exhibit -- Government exhibits -- excuse me --
16 Defendant's Exhibit 2 and 3 -- I had to use Government
17 exhibit stickers -- from the Carbon County Children Youth
18 Services that there has been an indication -- there has
19 been an indication of abuse.

20 Based upon that and based upon Mr. Kerestes'
21 denial, which came immediately thereafter in a letter,
22 based upon those things, Mr. Gold and the Government are
23 arguing there is a pattern of abuse that should enhance
24 his sentence by five levels under the Guidelines.

25 As is stated in Mr. Gold's report, first

1 disclosure, which I have provided to the Court as, I
2 believe, the fourth exhibit, Lonnie at the time of the
3 interview vehemently denied it. He denies today. He
4 denied it back then. It never happened. I told Mr. Gold
5 that why wasn't there a prosecution?

6 Mr. Gold's answer to that -- and I don't
7 know what the Government wants to proffer on this -- but
8 Mr. Gold's answer to that was to the effect that in this
9 part of Pennsylvania these crimes are not prosecuted.
10 That's a preposterous answer. There is no indication --
11 there is no police reports.

12 I believe the Government will not present
13 anything that would indicate that the state took any
14 action on this, criminal or otherwise, to get Mr. Gold as
15 advocating that there be a five-level increase based upon
16 this one-sided non adversarial report.

17 Bottom line is that Lonnie has a
18 constitutional right to maintain his innocence, and he
19 should not be punished under Oprendi, under all the law
20 that we have had recently from the Supreme Court for
21 conduct that has not been proven beyond a reasonable
22 doubt, and that's precisely what the probation officer
23 and the Government is intending to do now.

24 They are intending to increase his guideline
25 levels by five levels based upon a non adversarial

1 one-sided proceeding that Mr. Kerestes opposed as best he
2 could at the time and continues to, and that frankly
3 violates the Constitution. So we are asking that the
4 Court not impose that five-level increase.

5 Additionally, it should be noted that
6 Mr. Kerestes -- and this goes to the second argument --
7 but he has never hidden the fact that there is this
8 investigation. He told the FBI about it. He told
9 Pretrial Services about it; told Mr. Gold about it, and
10 therefore, we ask the Court what was he to do? How is he
11 to disprove this?

12 Bottom line is, he doesn't have to disprove
13 it; the Government has to prove it. They haven't done
14 it. They didn't do it in Pennsylvania, and we don't
15 believe they could hold their burden of proof today.

16 So on that basis, we would ask that that
17 objection be overruled as well. The Court can consider
18 the objections and the sentencing memorandum as
19 additional support for this argument. And unless the
20 Court wishes to hear my mitigation on Mr. Kerestes, I
21 can reserve that until after the objections are
22 determined.

23 THE COURT: Well, I am going to go ahead and
24 make my findings after all is said and done, Mr. Warner,
25 so please go ahead and on behalf of Mr. Kerestes in

1 regard to mitigation.

2 MR. WARNER: Thank you, your Honor.

3 I will not rehash the entire sentencing
4 memorandum on this case. Lonnie has been a client for
5 over a year now. We were talking about it, and it has
6 been a very long road, and I have watched him go through
7 all the stages of loss that one goes through. I have
8 talked extensively with his family. I have talked
9 extensively with him. We have met, I would say, dozens
10 of times within the past year, and I could just tell the
11 Court what I see in Lonnie and what I see from this point
12 forward.

13 No matter what the Court's decision is on
14 these objections there is going to be a term of
15 imprisonment here, and it is going to be a long one, and
16 that's different for this gentleman. This gentleman has
17 up to this point lived a completely law abiding life. He
18 is not like most of our defendants, especially -- we do
19 have some defendants here with no Criminal History.

20 But you look at what Mr. Kerestes has done
21 up to this point in his life, he served in the Armed
22 Forces. He was a Marine. After he was a Marine, he was
23 a corrections officer. He has fathered children. He has
24 been, despite what these reports might say, a very good
25 father, and there is support for that in my sentencing

1 memorandum. He is a loved son by his mother Nancy.

2 Lisa O'Brien is disturbed about what was
3 going on here. Lisa O'Brien is Mr. Kerestes' fiancée,
4 mother to his children. She understands what is going
5 on. She begs the Court to give him help but that being
6 said also realizes that he is an important part of those
7 kids' lives, and she, knowing the allegations full well,
8 wants him back home to assist her and to be a father to
9 these children.

10 You know, what we do in this Court is based
11 upon burdens of proof, and we do that so we don't just
12 jump to conclusions as it applies to people, and I am
13 begging the Court not to jump to the conclusions that
14 both the probation office and the Government are asking
15 the Court to make here. He made a very sad and sorry
16 mistake when he came here to Ohio, and he would be the
17 first one to tell you that.

18 He regretted that mistake from the first
19 moment, and I asked him, you know, why? What happened
20 here? I think he addressed it somewhat in his acceptance
21 of responsibility, but the bottom line is that he has
22 some problems that need to be worked on. All of us have
23 some problems.

24 He realizes that his problems are severe and
25 have changed really the rest of his life, but that being

1 said, he has never once expressed a desire not to work on
2 the problems. He never once said, you know, I didn't do
3 this. He showed remorse from the beginning, and he is
4 just doing his best to make this better, and I told him
5 all you can do to make this better is to focus on the
6 future from this point forward.

7 If you look back, it is going to be painful,
8 but you can redeem yourself, and you can do it by doing
9 what you have to do to get back to your family and also
10 doing what it takes to be healthy. And I think he is
11 willing to do both of those things.

12 And I would ask the Court to consider those
13 things and consider this gentleman in imposing a sentence
14 that is sufficient but not greater than necessary.

15 I have gone through all those factors in my
16 sentencing memorandum. I am not going to rehash them,
17 but frankly, a sentence in the range we believe
18 appropriate, 23, would be sufficient and not greater than
19 necessary to do all the things that the statute requires
20 and also to protect the public.

21 This is a gentleman that the Court has the
22 discretion to put on a lifetime supervised release, and
23 that sanction in and of itself for somebody with no prior
24 Criminal History is the kind of sanction that allows
25 protection for the public but also allows the

1 rehabilitation of Lonnie. And we would ask that the
2 Court consider that in imposing a low end or guideline
3 sentence at Criminal History level 23. That's all that I
4 have.

5 I know that he would like to speak to the
6 Court as well, and I would like to reserve in case there
7 is something that needs to be addressed in the
8 Government's presentation.

9 THE COURT: Mr. Warner, thank you.

10 Mr. Kerestes, is there anything you wish to
11 say?

12 THE DEFENDANT: On August 8, 2007, I
13 committed a crime, and I am very sorry for that, your
14 Honor. It has been a long road for the last year. I
15 lost just about everything in my life: My job, my
16 family, friends, some relatives. I just ask that justice
17 be served, and you can see a light and allow me to work
18 on what I need to work on, get counseling, that I need,
19 and I am sorry. I can't go on. I'm sorry.

20 Thank you, your Honor.

21 THE COURT: All right, Mr. Kerestes.

22 Mr. Sullivan, your thoughts on behalf of the
23 Government?

24 MR. SULLIVAN: Thank you, Judge.

25 First, addressing the objections to the PSR,

1 as far as the obstruction of justice, the additional
2 points of obstruction of justice and Mr. Gold's
3 recommendation that the Defendant not receive acceptance
4 of responsibility, Judge, it is clear that in this case
5 Mr. Kerestes from the time he was interviewed by the FBI
6 agents, when he was interviewed by pretrial and then,
7 lastly, when he was interviewed by Mr. Gold conveyed the
8 impression with all those authorities that while there
9 was a previous allegation of sexual molestation against
10 him, it was the product of an ugly divorce and there was
11 nothing to do, and there was no basis for it and nothing
12 came of it.

13 We know now that that's not entirely the
14 case. While no criminal prosecution may have come from
15 it, Mr. Kerestes was notified that the case was indicated
16 by the state of Pennsylvania. And Judge, I believe -- I
17 believe you have been provided with the documentation
18 from the state of Pennsylvania as well as the
19 psychological assessment of Mr. Kerestes.

20 I would ask that those be marked as part of
21 this sentencing hearing, preserved, and also that they be
22 sealed. Additionally, I would ask that the exhibits that
23 Mr. Warner proffered to the Court be sealed because if
24 they contain the child's name, the child's name is
25 contained, that can't be a public record.

1 But going back to my argument, clearly, he
2 was committing the impression that nothing came of it,
3 but something did. It was indicated. He was told it was
4 indicated, and to prove that, we know he appealed that,
5 he appealed that finding. He appealed that finding to
6 the state of Pennsylvania, and he was notified that his
7 appeal was rejected, and that they stood by their finding
8 that it was an indicated case.

9 So he did know that something came of it.
10 So as far as obstruction goes, we would rely on the
11 Court's analysis, but from the Government standpoint, we
12 feel that the evidence shows that Mr. Kerestes misled the
13 FBI agents at the beginning after he was arrested, the
14 Pretrial Services as well as Mr. Gold during his
15 interview of probation.

16 So certainly, we feel Mr. Gold was justified
17 in the report adding the points for obstruction and
18 not recommending the points for acceptance of
19 responsibility.

20 As far as the enhancement for pattern of
21 activity, the Government's position would be that the
22 evidence that we have just asked the Court to accept and
23 mark clearly sets forth by a preponderance of the
24 evidence that Mr. Kerestes engaged in this pattern of
25 activity, and Mr. Warner is just, frankly, wrong about

1 comparing this to Oprendi. This is not an Oprendi
2 situation. The case law is clear that the Court can
3 engage in fact finding at sentencing for relevant
4 conduct, and relevant conduct can support enhancements.

5 Indeed, the Sixth Circuit in the case of
6 David Brown, which was decided in November of 2006,
7 involved just such a finding where the Sixth Circuit
8 upheld the application of the same enhancement of
9 Mr. Brown, and the case law is clear that the Court can
10 engage in that fact finding, and that the standard of
11 proof is preponderance of evidence.

12 That being said, frankly, I don't think
13 someone could read -- Mr. Warner again minimizes as this
14 being some type of investigation done by a social worker.
15 That's not the case. If you read through it carefully,
16 Judge, and I know you have, that is a very detailed
17 assessment of the child done by a licensed psychologist,
18 not just by a social worker but by a psychologist who
19 carefully quotes and goes through the interview process
20 with that child.

21 I can tell you from someone who has
22 prosecuted child abuse for over almost 20 years, that was
23 a carefully done interview of that child, and if you read
24 it, anybody that reads it I think would certainly come
25 away finding what was in that report and to be credible

1 information from that child alleging the acts of abuse
2 that that child suffered at the hands of Mr. Kerestes.

3 And frankly, even Mr. Kerestes'
4 psychological report, while he denies it, even the
5 psychologist was certainly not overly impressed with
6 Mr. Kerestes himself and found that he was certainly
7 minimizing, shifting the blame on a lot of things.

8 In addition -- and we know this to be the
9 case -- that he also, Mr. Kerestes in here, was accused
10 of incidents involving child pornography, which he denied
11 to that psychologist. And we know, while it is not part
12 of this case, certainly, we know that that -- there was
13 certainly evidence of child pornography on Mr. Kerestes'
14 computer back in Pennsylvania, which still --

15 MR. WARNER: Your Honor, I am objecting to
16 that, and that's the kind of evidence the Court should
17 not, cannot rely on in this hearing. I want to make that
18 clear for the record.

19 THE COURT: All right. I am not going to
20 rely on the child pornography.

21 Go ahead, Mr. Sullivan.

22 MR. SULLIVAN: Well, Judge, also, I indicate
23 that -- well, we will get to that next.

24 Reading that psychological assessment of the
25 child, I think there is clear evidence by a preponderance

1 of the evidence that Mr. Kerestes did engage in that
2 pattern of activity, and therefore, the Government would
3 submit that that enhancement is supportive as well.

4 As to the sentence in this case and other
5 comments made by Mr. Warner, by Mr. Kerestes as to
6 Mr. Warner, Mr. Warner claims that Mr. Kerestes -- and I
7 believe the part his girlfriend wants to welcome him
8 back, wants him back, but I think he relies on the letter
9 submitted to this Court.

10 But I would note that the letter submitted
11 to this Court is dated October 2007 and November of 2007,
12 and in the report prepared by Mr. Gold, indeed, I believe
13 he indicates that based on his interview of the
14 girlfriend, Mr. Kerestes was not going to be welcome back
15 in that home, and she indicated that he would not be able
16 to return to her home when he was released from prison.

17 And that would also be supported by the
18 fact -- and Mr. Warner can object -- but in this case,
19 the girlfriend did cooperate with authorities in turning
20 evidence over to the authorities subsequent to
21 Mr. Kerestes coming to Ohio. So I would say whether or
22 not she is going to be welcoming him home is certainly
23 doubtful.

24 As to the comments of Mr. Kerestes, he says
25 that on August 8, 2007, he committed a crime. He made a

1 mistake. Well, it was not just August 8, 2007, Judge.
2 He started chatting first of all with this undercover
3 officer on July 18, 2007, to try to have sex with a 14
4 year-old child, and more importantly, he started chatting
5 in -- I am not sure -- in a chat room, a chat room
6 entitled m-e-i-n-u-r-d-o-t-p-a.

7 Now, when Mr. Kerestes was interviewed by
8 the agents, he admitted that that stood for "me and your
9 daughter Pennsylvania," and that he created that chat
10 room. So he didn't just make a mistake on August 8th.
11 He created a chat room to find women willing to let him
12 have sex with their daughters. He created a chat room,
13 "me in your daughter, or "me and your daughter in
14 Pennsylvania."

15 He said it was "me and your daughter,"
16 although it was spelled "me in your daughter". Either
17 way, he created a chat room advertising his desire to
18 engage in sexual activity with children, to try to find
19 women who were willing to let them meet their daughter
20 for sex. So this was not just an isolated incident of
21 him just making a mistake. He was seeking out children
22 to have sex with. He found someone he felt was willing,
23 and he traveled from Pennsylvania to Ohio to engage in
24 sexual activity with a child.

25 Judge, we believe the Guidelines are the one

1 sentencing factor that takes into account all the other
2 factors that take into account the seriousness of the
3 offense, the background of the Defendant, the need for
4 punishment. They take all that into account, and the
5 Government believes that the Guidelines range is a range
6 of sentence that comes to a sentence that is sufficient
7 but not greater than necessary to achieve the goals of
8 sentencing, and I would ask you to administer such a
9 sentence.

10 THE COURT: All right. Thank you.

11 Mr. Gold, I am going to give you an
12 opportunity to be heard also because not only were you
13 part of our conversation in chambers, but Mr. Warner made
14 statements that I will allow you to respond to if you so
15 wish.

16 MR. GOLD: Thank you, your Honor.

17 I believe I can remain with that -- with
18 the accuracy of my report without adding additional
19 comments.

20 THE COURT: Very well. We will let it go at
21 that. Let's take a look at the presentence investigation
22 report and see --

23 MR. WARNER: Judge, just for the record, if
24 it pleases the Court, can I just respond to a few things?
25 There is a high likelihood based upon the Court's ruling

1 that there could be an appeal either way. I think there
2 are some things that --

3 THE COURT: Go ahead, Mr. Warner.

4 MR. WARNER: -- and I will keep it brief.

5 First of all, again, I want to underscore
6 the fact that there is no cross-examination here, no
7 Court review at all. There is no defense at all
8 organized, presented to this, and the fact that in this
9 hearing Mr. Sullivan had an opportunity, this has been
10 continued many times, to coordinate some evidence that
11 might show a preponderance here.

12 But instead he has relied only on the work
13 of the social worker, and that's frankly what she is.
14 And Mr. Sullivan said in his 20 years of experience this
15 occurs often. I am saying my eleven years of defense
16 experience in the county, trying these cases, even
17 against Mr. Sullivan, often we find that Children
18 Services workers are not the most fair and balanced
19 people, and that it is a-one sided investigation.

20 And I think the Court coming from the same
21 background has experience with this as well. So to rely
22 on this, to say there is a preponderance based upon what
23 a social worker is saying when it has been denied the
24 entire time is wrong.

25 And finally, Dr. Sharis in his report

1 itself, not to the obstruction but to this five-level
2 enhancement, makes some comments that are very important.
3 He is from this area, and I think both Mr. Gold and
4 Mr. Sullivan have, at least, implied, well, often things
5 aren't prosecuted for whatever reason. Well, he is from
6 this area, and he even indicates in his report that, you
7 know, because there is no prosecution, no indictment, it
8 is hard to proceed and know what happened here.

9 I think that that is the best evidence the
10 Court could rely on in not imposing the five-level
11 enhancement. That's all I have, and I thank the Court
12 for this opportunity and time.

13 THE COURT: Certainly. Thank you,
14 Mr. Warner.

15 MR. SULLIVAN: Judge, and I'm sorry.

16 THE COURT: Okay. Last time, and then we
17 are going to move on.

18 MR. SULLIVAN: Yeah. Just that you talk
19 about the social worker, the report I was referring the
20 Court to was from John A. Reinhart, Ph.D. licensed
21 psychologist. It was not a social worker for the
22 Department of Children's Family Service. It was not a
23 she for that matter. He is clearly referring to a
24 different report.

25 I am referring to the psychological

1 evaluation that was done of this child by John A.
2 Reinhart, Ph.D., licensed psychologist.

3 THE COURT: All right. Let me -- just so
4 that we are clear, first of all, I am going to place
5 under seal the exhibits that Mr. Warner has marked 1, 2,
6 3, 4. I will mark the Court's Exhibits A and B. And A
7 will be the Renaissance Psychological and Counseling
8 Corporation, Inc. psychological evaluation of the
9 daughter by John A. Reinhart, Ph.D., licensed
10 psychologist.

11 The Court will be relying upon that, and
12 also, we will mark as the Court's Exhibit B the
13 psychological associates of Schuylkill County -- that's
14 S-c-h-u-y-l-k-i-l-l, and that's by Joseph Sharis, MA,
15 NCC, CCMC after his name, licensed psychologist, and that
16 was done on Mr. Kerestes. That will be B, and again,
17 both of those will also be sealed. Date of evaluation
18 for Dr. Reinhart's report 5-27-06, and Mr. Sharis, I
19 think that was 3-21-05. Now we are clear on that.

20 Let's take a look at the report. We have
21 Count 1, travel to engage in illicit sexual conduct with
22 a minor, a class B felony. The indictment was filed on
23 August 29th, 2007. The Defendant pled guilty to the
24 offense of interstate travel for purposes of sexual
25 conduct with a minor. He pled on February 26 of 2008.

1 There is no plea agreement in this matter. Mr. Kerestes
2 has been in custody since his arrest.

3 As far as the offense conduct, we will use
4 this both as the nature and circumstances of the offense
5 once we get to the 3553(a) factors and the offense
6 conduct itself. In this matter, 37 year-old Mr. Kerestes
7 faces sentence for his first conviction. He was
8 convicted of communicating over the internet with an
9 individual he believed to be a 41 year-old woman with a
10 14 year-old daughter between July 18, 2007, and August
11 8th of 2007.

12 The Defendant sought to have the mother
13 teach her daughter various sexual acts with the Defendant
14 as participant. He traveled from Pennsylvania to Ohio in
15 order to meet them and to perform these sexual acts with
16 the pair. That's a summary of what happened here. Okay.

17 Victim impact: There are no actual victims
18 in this case. We did have an undercover officer posing
19 as the mother who was willing in the scenario to provide
20 access to her daughter, age 14, for sexual purposes. As
21 far as adjustment for obstruction of justice, I know that
22 Mr. Gold is recommending and as well as Mr. Sullivan is
23 recommending for obstruction, as I stated in chambers,
24 this is a close call.

25 There has been indications that Mr. Kerestes

1 said there was nothing found. I could see where Mr. Gold
2 would take that to mean there was no finding by the state
3 of Pennsylvania, and Mr. Sullivan alluded to the FBI
4 being misled by Mr. Kerestes.

5 I can also see the argument by Mr. Kerestes
6 that nothing came of it. At the end, i.e., he was never
7 prosecuted for it, or it never went beyond the finding
8 and the appeal. There is no dispute, and there shouldn't
9 be no dispute that this was -- that there was indication
10 of molestation on his daughter and an appeal by
11 Mr. Kerestes to that finding.

12 Again, that is really undisputed, and the
13 Court so finds. It is the interpretation of the words
14 and by what Mr. Kerestes meant by -- by it didn't go
15 anywhere, and certainly, that could mean that it was
16 never prosecuted and stopped at that level.

17 It is close enough that I am not going to
18 punish him for that obstruction part, so I will make no
19 addition for obstruction.

20 As far as acceptance of responsibility, I
21 will find that he has accepted responsibility for this
22 crime. He has been consistent that he denied previous
23 behavior, but I will find that he has accepted
24 responsibility. There certainly has been recommendations
25 from probation department as a whole on much less than

1 what we have here. I am going to accept his statement to
2 be sufficient for reduction.

3 Offense level computation, the 2007 edition
4 of the Guidelines manual was used, and starting off with
5 a base offense level of 24, we do add two for a specific
6 offense characteristic of Defendant using a computer to
7 communicate with the victims. No victim related
8 adjustment. No adjustment for role in the offense.
9 There will be no adjustment for obstruction of justice.
10 Court will grant three-level reduction for acceptance of
11 responsibility.

12 Where does that put us at that point?

13 MR. WARNER: 23, I believe, your Honor

14 THE COURT: Correct. 23 for adjusted
15 offense level.

16 Now, as far as Chapter 4 enhancements -- and
17 I understand this is -- excuse me -- I want to say
18 probably the main argument, the main objection, I have
19 read both reports in detail, that is, by Dr. Reinhart and
20 also by Mr. Sharis. I have taken a look at this case as
21 a whole. Nothing should ever be read as an island so to
22 speak or on its own.

23 There has to be context to what has happened
24 in this case, and for purposes of the Court's finding
25 whether there should be a Chapter 4 enhancement for

1 pattern of activity under the Guidelines.

2 Now, Mr. Kerestes' daughter was evaluated.
3 I would have to agree with Mr. Sullivan this is a very
4 good report. I have seen countless numbers of reports in
5 my twelve years on the bench. This is a good one. I
6 also took a look at Mr. Sharis' report. Let's start with
7 the difference:

8 First of all, the daughter and the mother
9 were both interviewed on the first report. Only
10 Mr. Kerestes was interviewed by Mr. Sharis. It does make
11 a difference. Mr. Sharis did not have the benefit of
12 talking with the daughter or the mother, quite frankly.

13 Now, as far as the first report by
14 Dr. Reinhart, Mr. Kerestes has raised consistently the
15 allegations of a very contentious divorce. I don't doubt
16 that, and in his view, this is what has caused the mother
17 to have the child turn against him. We have seen that in
18 many cases. That's not unusual. I don't find that
19 convincing in this case.

20 Her reports are specific, and I am looking
21 at the discussion part, which I thought was very
22 relevant, developmentally appropriate, describing various
23 sexual acts and occurrences. (Child's name redacted)
24 report of one large memory is clinically consistent,
25 indicative of reports given by children who experience

1 long-term sexual victimization, and here is what is
2 crucial, especially when there is a very contentious
3 divorce, the statements provided by (Child's name
4 redacted) "did not have any adult content, logic, or
5 semantics involved, and her statements appear to be
6 indicative of an 11 year-old female."

7 That is very important because normally when
8 we have a child being pressured or talked to, coached by
9 a parent, there is something in there that reflects adult
10 influence. I don't find that here. Also, her rationale
11 for not disclosing in the past was very clear and
12 specific due to fear of reprisal from her father and
13 based upon her general fear that she had of his anger
14 within the home. I will find that to be credible, too,
15 because Mr. Kerestes himself suffered some abuse growing
16 up.

17 We usually find that somehow and many times
18 that is passed down in one way or another. That is
19 consistent. And also the fact that he tried or sought to
20 have sex with a 14 year-old is also consistent.

21 I would agree with Mr. Sullivan and disagree
22 with Mr. Warner on the part that there is a
23 constitutional violation. Clearly, the law -- the
24 Supreme Court of the United States has made clear that
25 the Court can make findings; does not violate the

1 Constitution. It is appropriate for the Court to make
2 findings.

3 There is preponderance of the evidence, and
4 second of all, the Guidelines are advisory. They are not
5 mandatory. The Court has discretion whether to accept
6 the Guidelines, stay within them, go up, go down, that is
7 depart, grant a variance under 3553(a). The Court has
8 been given great latitude to do that, and there is no
9 constitutional violation.

10 The Court is called upon to make a finding,
11 and that is whether under -- by a preponderance of the
12 evidence this occurred, and as we know, that means more
13 probable than not, anything over 50 percent. I do find
14 that here.

15 I would not find it beyond a reasonable
16 doubt, and getting to that burden would be difficult, and
17 certainly, that could be an explanation, a reasonable
18 explanation as to why this was not prosecuted. There are
19 many jurisdictions that do not prosecute these types of
20 cases unless they believe they can prove it beyond a
21 reasonable doubt, and many times the word of the child
22 without any corroborating evidence, medical or otherwise,
23 is not good enough for the prosecution. That's
24 understandable.

25 It has been my experience since I came here

1 that this U.S. Attorney's Office will not indict unless
2 they believe they have someone beyond a reasonable doubt,
3 quite frankly, very different from the county, which,
4 Ms. Skutnik, you will find as one of the differences.

5 However, getting back to the issue, I do
6 find it by a preponderance of the evidence; does not need
7 to be more than that, and again, I would not find it
8 beyond a reasonable doubt, and the Court doesn't have to
9 in order to find a pattern of activity.

10 And again, Mr. Sharis' report, he didn't
11 have the benefit of interviewing (Child's name redacted).
12 He does make a statement, "although deviant sexual
13 interest in children was not identified by the AASI, this
14 may need to be considered tentatively." Makes a couple
15 other statements.

16 "Although conclusions are limited due to his
17 denial, the role of narcissistic and antisocial traits
18 combined with generalization of sexual behaviors cannot
19 be ruled out as a pathway to offending."

20 He does waffle back and forth. In fairness
21 to Mr. Warner, he has pointed that out, but again, he did
22 not have the benefit of interviewing the child. So
23 that's the finding of the Court by a preponderance of the
24 evidence.

25 The five levels will be added as a Chapter 4

1 enhancement. I believe that brings us to a 28 for a
2 total offense level.

3 MR. WARNER: Judge, I hate to interrupt --
4 and I thank the Court for its ruling -- I would like to
5 just put a couple other things on the record for purposes
6 of appeal before the Court renders sentence if that's
7 okay.

8 THE COURT: Go ahead, Mr. Warner.

9 MR. WARNER: -- and I think this is the
10 right place to put it.

11 First of all, that the psychiatrist and the
12 social worker who prepared the report did not interview
13 Lonnie, same thing, but Mr. Sharis had the benefit of the
14 report. Also, the Court, I believe, made a finding that
15 molestation is passed down generally, and that's -- I
16 believe the science would indicate that that's not the
17 case and --

18 THE COURT: I didn't say that. I didn't say
19 molestation was passed down, but abuse, and it manifests
20 itself in different ways.

21 MR. WARNER: Okay. Yeah. We would dispute
22 that, and we could provide the Court with that, but most
23 importantly, we also want to preserve a Crawford
24 violation here as well because I believe Mr. Kerestes,
25 when sentenced, depending what the Court does now, is

1 increased here, and he has had no opportunity to
2 cross-examine or otherwise challenge this obviously
3 testimonial evidence, and we believe that it is a
4 constitutional violation for the Court to rely on it.
5 So I would like the Court to put that in the record as
6 well.

7 THE COURT: All right. Mr. Warner, thank
8 you.

9 Mr. Sullivan, I will allow you to respond at
10 this point for purposes of the record, too.

11 MR. SULLIVAN: Judge, hearsay is admissible
12 at a sentencing hearing. This is not a trial so it would
13 not be a Crawford violation. But just while I am up on
14 my feet though, Judge, if you could just order when you
15 were reading the report, you did mention the child's name
16 a couple times, if you could order that to be redacted
17 when this record is prepared.

18 It is now with the Court of Appeals all
19 records on appeal are electronically filed, and if you
20 could order the name be redacted in preparation of this
21 record, the child's first name.

22 THE COURT: We will do that.

23 Thank you.

24 MR. SULLIVAN: And we discussed it in the
25 back, but for the record, the Government would make a

1 motion for the third point for acceptance. I know you
2 granted it, but I already told you we would make it based
3 on these crimes, and I just wanted to make that part of
4 the record.

5 Thank you.

6 THE COURT: Thank you, Mr. Sullivan. All
7 right. Let's move on.

8 Defendant's Criminal History, there is none.
9 No juvenile adjudications, no adult criminal convictions.
10 Therefore, he is automatically placed in category I. As
11 far as offender characteristics, Mr. Kerestes was born in
12 Pennsylvania, 1970. His mother resides in North
13 Carolina. She is retired. Father passed away.

14 They were divorced when Mr. Kerestes was in
15 his late teens. He does have one brother, and he also
16 has two step brothers and a step sister. He was raised
17 primarily in Pennsylvania by both parents. There was
18 trouble between him and his father. He maintains a good
19 relationship with his mother, but he and his father did
20 not get along.

21 He claims his childhood was confusing due to
22 moving around a lot. The father apparently couldn't hold
23 down a job or wouldn't hold down a job. There was
24 allegations by the mother of the Defendant's father
25 sexually molesting the sister. There was also concern

1 about the Defendant.

2 At 18 he left home, joined the Marine Corps.
3 He met MD. They married in August 1992. Divorce is
4 pending. There is two children, ages 14 and 10. The
5 female is the one we are talking about, age 14. Problems
6 in the marriage led to the pending divorce. However, it
7 does indicate -- she did indicate, that is, the spouse,
8 that the Defendant was a good provider with respect to
9 child support.

10 Mr. Kerestes does have three children with a
11 significant other: Age 3, ages 3, 2, and 1. It appears
12 at this point the relationship will not continue.
13 Mr. Kerestes did reside with her at the residence from
14 October of '03 until his arrest for the present offense.
15 Physical condition appears to be good.

16 Mental and emotional health: Some issues
17 with depression after he separated from his wife. It is
18 usual to have depression since the arrest. There is
19 nothing unusual about that. We have gone through the
20 denials of the sexual contact with his daughter. No need
21 to repeat that.

22 Defendant does have a history of physical
23 and emotional abuse by his father, and he agrees he would
24 benefit from treatment to address the issues. And he has
25 asked for help. The Court will do its best to grant him

1 that help.

2 Substance abuse: When he was 16, he smoked
3 Marijuana about six times, alcohol, began at the age of
4 15. He indicated he drank excessively when in the
5 military. He admitted he had a problem with alcohol, and
6 he eventually stopped drinking. Educational and
7 vocational skills, he graduated from Panther Valley High
8 School in 1988 and reports graduating from Carbon County
9 Vocational Technical School in Pennsylvania in 1988
10 studying auto mechanics.

11 Military record: He entered the Marine
12 Corps in 1988; separated in 1996 with an honorable
13 discharge; rank of E-5 as a sergeant. Employment 2004 to
14 2007, he was employed by Toby Hanna Army Depot in
15 Pennsylvania as a mechanic. From 2003 to 2004, he was
16 employed by Defense Support Services. 1998 to 2003, he
17 was employed by the Pennsylvania Department of
18 Corrections as a correction officer and prior employment
19 was as a mechanic in the private sector as well as the
20 Marines; worked on both gas, diesel, and multi-fuel
21 vehicles.

22 Financial condition doesn't look good. Our
23 analysis leads us to believe that he does not have the
24 resources to pay a fine, cost of prosecution, or any
25 other costs of these proceedings. Sentencing options for

1 the Court, under the statute, the maximum term is 30
2 years. Under the Guidelines, based on the total offense
3 level of the Court finding now of 28, Criminal History
4 Category I, our range is 78 to 97, Mr. Gold?

5 MR. GOLD: Your Honor, that would be 46 to
6 57 months at an offense level of 23.

7 MR. SULLIVAN: 28.

8 MR. WARNER: Yeah.

9 MR. GOLD: I apologize, at a 28, that would
10 be 78 to 97 months.

11 THE COURT: Right. I believe that was the
12 Court's finding, right? Okay. Thank you.

13 Again, no plea agreement in this matter.
14 Supervised release under the statute, it is not more than
15 five years, however. 18 U.S.C. 3553(a) (3) (K) provides
16 that a term of supervised release is at least five years
17 and may be any term of up to life for violation of 18
18 U.S.C. Section 2423(b) .

19 Under the Guidelines, it is at least three
20 years but not more than five years. Additionally, the
21 term of supervised release may be any term to life under
22 the Guidelines.

23 And the policy statement, if the instant
24 offense of conviction is a sex offense, however, the
25 statutory maximum term of supervised release is as I

1 recommended. Probation under the statute: Is not
2 eligible because it is a class B felony. Under the
3 Guidelines, again, not eligible because it is a class B
4 felony. He falls in Zone D of the sentencing table and
5 not eligible for probation.

6 Mandatory drug testing does apply unless the
7 Court finds based upon reliable sentencing information
8 that Mr. Kerestes would indicate a low risk of future
9 substance abuse. Under the statute, that is, 3563 and
10 3583 of 18 U.S.C., Defendant is required to register
11 under the Sex Offender Registration and Notification Act
12 and must comply with the requirements of that Act as
13 directed by the probation officer.

14 Fines under the statute, the maximum fine is
15 \$250,000, and special assessment of \$100 is mandatory. I
16 believe our range is \$12,500 to \$125,000.

17 Mr. Gold?

18 MR. GOLD: That's correct, your Honor.

19 THE COURT: Thank you.

20 Again, a special assessment must be imposed
21 on a convicted Defendant. Paragraph 85 gives us the
22 factors the Court must look at in determining the amount
23 of any fine. I will find those to be irrelevant since
24 Mr. Kerestes has no ability to pay any fine. Restitution
25 is not in issue.

1 Factors we consider in imposing sentence
2 under U.S. versus Booker and the U.S. Sentencing
3 Commission. There is a three-step analysis: One,
4 determine the appropriate guideline range; two, identify
5 any possible guideline departures, and three, determine
6 if a non guideline sentence that is a variance can be
7 considered under 18 U.S.C. 3553(a) .

8 Our advisory range is 78 to 97 months.
9 Mr. Gold has not identified any factors that may warrant
10 a departure outside of the range. The Court must impose
11 a sentence sufficient but not greater than necessary to
12 comply with the purposes of sentencing set forth under
13 3553(a) . We must take a look at the nature and
14 circumstances of the offense, history and characteristics
15 of the Defendant, the need for the sentence imposed and
16 the kinds of sentences available. Mr. Gold has not
17 identified any sentencing factors that may warrant a
18 variance.

19 Mr. Warner, at this point, are there any
20 other unresolved objections, concerns that have not be
21 placed upon the record at this time?

22 MR. WARNER: No, your Honor. We do have a
23 requested recommendation for the BOP for placement. I
24 can do that now or --

25 THE COURT: We will wait until at the end.

1 MR. WARNER: Okay. Thank you.

2 THE COURT: But don't forget that. Thank
3 you.

4 Mr. Sullivan, at this point, any unresolved
5 objections or concerns by the Government?

6 MR. SULLIVAN: No, Judge.

7 THE COURT: Okay. All right.

8 Let's move on to the 3553(a) factors. The
9 Court has already gone over the nature and circumstances
10 of the offense via summary. Both sides and the Court
11 have read the reports. Let's move on to the history and
12 characteristics of the Defendant. Take a look at prior
13 record: Violence, physical abuse, diminished capacity,
14 employment, age, substance abuse, and family ties.
15 Mr. Kerestes has no prior convictions but was indicated
16 to have molested his prepubescent daughter.

17 He then attempted to have sex with a
18 14 year-old girl along with the mother. He has no known
19 history of violence, abuse, or diminished capacity, a
20 limited history of Marijuana use.

21 While in the military he reported drinking
22 heavily but does not appear that he has chemical
23 dependency problems at this time. He does have a regular
24 work history, primarily as a mechanic, which he did in
25 the military and private sector. He was also previously

1 a correctional officer. His mother resides with his step
2 sister in North Carolina. His father is recently
3 deceased.

4 He has one brother and a step brother who
5 live in Pennsylvania. Mr. Kerestes is married but
6 separated from his wife; a divorce is pending. His wife
7 and their children reside in Pennsylvania. His former
8 girlfriend and their children also live in Pennsylvania.

9 Indications of physical and emotional abuse
10 that Mr. Kerestes has suffered at the hands of his father
11 and allegations of molestation by his father against his
12 sister. Need for sentence imposed: I will come back to
13 that when I actually sentence Mr. Kerestes.

14 Kinds of sentences which are available: The
15 Court has already gone over all of those in detail. No
16 need to repeat. Sentencing disparities: We look at
17 defendants with similar records and conduct, and options
18 that Mr. Kerestes faces are consistent with those with
19 similar backgrounds and similar findings by the Court.
20 No co-defendants in this case. Restitution is not
21 applicable.

22 We will move back to need for sentence
23 imposed. We will take a look at just punishment, afford
24 adequate deterrence, protect the public, reflect the
25 seriousness of the offense, and improve offender conduct

1 and condition.

2 Mr. Kerestes, I think you've already
3 acknowledged the fact that you have to work out some
4 significant issues in your life. I think your childhood
5 was probably pretty traumatic for you because it seems to
6 be manifesting itself in your behavior. When things get
7 tense, I think you indicated that you wanted to, I guess,
8 in escape live out your fantasy and sought to have sex
9 with what you thought was a 41 year-old mother and a
10 14 year-old daughter.

11 Indications are correct by Mr. Sullivan that
12 you set this up for the purpose of searching out that
13 kind of fantasy and carrying it on through. I know you
14 have been steadfast in your position that you never
15 sexually molested your daughter in the past. It was not
16 an easy call for me to make, but based upon the evidence
17 that I have, the reports, taking a look at this whole
18 thing in context, I make that finding.

19 Again, I could not find that beyond a
20 reasonable doubt under any circumstances, but more likely
21 than not, I think there is enough there to find, and the
22 Court has made that determination.

23 Afford adequate deterrence, you know, you
24 have been in jail since your arrest. As you stated,
25 you've lost probably most everything in your life at this

1 point. If this hasn't deterred you at this point, I am
2 not sure what will, other than the fact to get you help
3 and get that psychological and emotional part
4 straightened out, that will help you.

5 And that goes to protecting the public
6 because if we do get you the help that you so sorely
7 need, then you are less likely to reoffend, and you don't
8 find yourself in the justice system any more, and the
9 public is protected from further behavior.

10 Is it a serious offense? Yes. I mean, we
11 do know that just by the nature of the offense and also
12 the possible penalties that you face.

13 But I do, again, emphasize improve offender
14 conduct and condition because that is part of the need
15 for the sentence imposed, and when we focus as much on
16 that as we do the other factors and address that, then
17 everybody is protected, and you find yourself a much
18 better and more productive citizen than when you started
19 this whole business.

20 And that's ultimately what we are looking
21 for as well as getting your personal life straightened
22 out. Again, hopefully that's the case.

23 Just as an overview, talking about these
24 types of cases and others, the potential sentences that
25 Congress comes up with these cases and others are not

1 just pulled out of the air. People don't realize all the
2 hearings that are held and all the documents that are
3 submitted, testimony that is taken. So they get a good
4 indication of what is happening across the country.

5 And contrary to what we do or at the county
6 level, Congress has to address this on a nationwide
7 scale. So it does the best that it can with all the
8 evidence that is brought to it and say what's best for
9 the nation as a whole, and I mean to give you an overview
10 because you should have some context as to why these
11 things are considered to be serious because there is all
12 this evidence coming into Congress saying this is a
13 problem, our children need to be protected, quite
14 frankly.

15 You know, whether it is child pornography or
16 having sex with underage children, that all goes in the
17 same pot so to speak for Congress to assess and determine
18 what's an appropriate punishment for that type of
19 behavior. All right.

20 With that in mind, let's go ahead and
21 sentence you. I will give you a sentence which I believe
22 is sufficient but not greater than necessary to comply
23 with the 3553(a) factors.

24 I have talked about a lot of, if you will,
25 bad things. Before I pass sentence, let me talk about a

1 couple good things that keep you from being at the top of
2 the offenders, Mr. Kerestes.

3 You served our country, something to be
4 proud of. You have a good work history. You paid your
5 child support, and regardless of the personal issues that
6 you have had with your ex-wife, there is something to say
7 about supporting your family and working constantly and
8 serving our country. I don't want to let that go by
9 because all of that is important, and it should be
10 mentioned, and I do consider that.

11 All right. Mr. Kerestes, it is the judgment
12 of this Court that you are committed to the custody of
13 the Bureau of Prisons for a term of 87 months. Upon
14 release from imprisonment, you will be placed on
15 supervised release for life.

16 Within 72 hours of release from the custody
17 of the Bureau, you will report in person to the U.S.
18 Probation Office in the sentencing district or in the
19 district to which you are released. Based upon a review
20 of your financial condition, I will find that you do not
21 have the ability to pay a fine.

22 Therefore, it is waived. Restitution is not
23 in issue in this case. You will pay to the United States
24 a special assessment of \$100, which is due immediately.
25 While on supervision, you will not commit another

1 federal, state, or local crime, shall not illegally
2 possess a controlled substance, shall comply with the
3 standard conditions that have been adopted by this Court
4 and shall comply with the following additional
5 conditions.

6 I am going to waive the mandatory drug
7 testing. I will find that this is not drug-related, and
8 you are not at risk.

9 You shall not possess a firearm, destructive
10 device, or any dangerous weapon. You will provide the
11 probation officer with access to any requested financial
12 information. There will be a sex offender registration
13 and notification. You are required to register under the
14 Sex Offender Registration and Notification Act and must
15 comply with the requirements of that Act as directed by
16 the probation officer.

17 Pursuant to the Adam Walsh Protection Act of
18 2006, you will register as a sexual offender not later
19 than three business days from the release from custody.
20 You will keep the registration current in each
21 jurisdiction in which you reside, are employed, or you
22 are a student. You shall no later than three business
23 days after each change in name, residence, employment, or
24 status appear in person at least -- in at least one
25 jurisdiction in which you are registered and inform that

1 jurisdiction of all changes in reporting information.

2 Failure to do so may be a violation of your
3 condition of supervised release and may be a new federal
4 offense punishable by up to ten years. You shall not
5 associate or have verbal, written, telephone, or
6 electronic communication with any person under the age of
7 18 except, one, in the presence of the parent or legal
8 guardian of said minor, and two, on the condition that
9 the Defendant notify said parent or legal guardian of his
10 conviction in the instant offense.

11 This provision does not encompass persons
12 under the age of 18 such as waiters, cashiers, ticket
13 vendors, et cetera, with whom Defendant must deal in
14 order to obtain ordinary and usual commercial services.

15 You shall not associate in person or in any
16 other manner with any individual who has a sexual
17 interest in or attraction to minors, that is, persons
18 under the age of 18 nor shall you correspond with any
19 such individual without the prior express written
20 approval of the probation officer.

21 You shall not seek obtain or maintain any
22 residence, employment, volunteer work, church, or
23 recreational activities involving minors in any way
24 without the prior express written approval of the
25 probation officer. You shall not reside within 100

1 yards of school yards, playgrounds, theme parks, arcades
2 swimming pools, skating rinks, toy stores, and other
3 places where persons under the age of 18 play,
4 congregate, or gather without the prior express written
5 approval of the probation officer.

6 You will comply with all applicable
7 requirements to register as a sexual offender. At the
8 direction of the probation officer, you will participate
9 in an outpatient mental health program, including
10 treatment for sexual deviancy, which may include
11 polygraph testing.

12 Mr. Warner, at this point, would you
13 recommend institutional treatment?

14 MR. WARNER: Yes, your Honor, and we would
15 ask the Court to make the recommendation that Butner,
16 North Carolina, which offers the kind of treatment
17 Mr. Kerestes needs, and we would also ask that the Court
18 indicate in its order that Mr. Kerestes was a corrections
19 officer. Therefore, he should not be housed in
20 Pennsylvania where he was. That could be dangerous for
21 him.

22 THE COURT: Okay. Mr. Sullivan?

23 MR. SULLIVAN: Judge, I just -- if the
24 desire to get him sex offender treatment is -- I don't
25 believe Butner is doing that any more. I believe Devon,

1 Massachusetts -- I think there are going to be two
2 institutions. One is Devon, Massachusetts. I believe
3 Butner is moving toward doing the civil commitment of sex
4 offenders that was required under the Adam Walsh Act. I
5 am not sure if you want to designate a specific
6 institution or just as the treatment.

7 THE COURT: Right. Mr. Warner, let's do
8 this: I will recommend that the appropriate facility or
9 institution for treatment for sexual deviancy
10 Mr. Kerestes be sent to consistent with their assessment.

11 MR. WARNER: Thank you, your Honor.

12 THE COURT: Okay. Which will include, of
13 course, the institutional treatment and also recommend
14 that Mr. Kerestes does not serve in Pennsylvania. It is
15 up to the Bureau to decide what to do, but those will be
16 the recommendations.

17 I do not want to forget the computer
18 internet restricted -- let's go ahead and put that on the
19 record. Defendant is prohibited from accessing any
20 online computer service at any location, including
21 employment or education, without prior written approval
22 of the U.S. Probation Office or the Court.

23 This includes any internet service provider,
24 bulletin board system, or any other public or private
25 computer network. Any approval shall be subject to

1 conditions set by the U.S. Pretrial Services probation
2 officer or the Court with respect to that approval.

3 Defendant shall consent to the U.S.
4 Probation Office conducting periodic unannounced
5 examinations of his computer system, which may include
6 retrieval and copying of all memory from hardware,
7 software and/or removal of such systems for the purpose
8 of conducting a more thorough inspection and will consent
9 to having installed on his computer at his expense any
10 hardware or software to monitor his computer use or
11 prevent access to particular materials.

12 Defendant consents to periodic inspection of
13 any such installed hardware-software to ensure it is
14 functioning properly. Defendant shall provide the U.S.
15 Probation Office with accurate information about his
16 entire computer system. That includes hardware and
17 software, all passwords used by him and his internet
18 service provider and will abide by all rules of the
19 computer restriction and monitoring program.

20 Defendant shall submit his person,
21 residence, place of business, computer, or vehicle to a
22 warrantless search conducted and controlled by the U.S.
23 Pretrial Services probation office at a reasonable time,
24 in a reasonable manner based upon reasonable suspicion of
25 contraband or evidence of a violation of a condition of

1 release. Failure to submit to a search may be grounds
2 for revocation.

3 Defendant shall inform any other residents
4 that the premises and his computer may be subject to a
5 search pursuant to this condition. Defendant shall
6 cooperate in the collection of DNA as directed by the
7 probation officer. All right.

8 Mr. Warner, anything further on behalf of
9 Mr. Kerestes before I read him his appellate rights?

10 MR. WARNER: No. Thank the Court.

11 THE COURT: Mr. Kerestes, because you did
12 not sign a plea agreement, you do not have limited appeal
13 rights; you have full appellate rights. If you wish to
14 appeal the conviction or sentence in this case, you must
15 do so within 10 days after entry of this Court's
16 judgment.

17 You have the right to have papers properly
18 prepared and filed on your behalf, and you do have the
19 right to counsel on appeal. And if you cannot afford
20 counsel on appeal, of course, we will pay for counsel to
21 represent you.

22 Do you understand those rights?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And Mr. Warner, I would just ask
25 that you continue to safe guard Mr. Kerestes' rights of

1 appeal pending any decision he may have in that regard.

2 MR. WARNER: I will. Thank you, your Honor.

3 THE COURT: Okay. Mr. Sullivan, on behalf
4 of the Government, anything further at this point?

5 MR. SULLIVAN: No. Thank you, Judge.

6 THE COURT: Mr. Gold, anything further?

7 MR. GOLD: No. Thank you.

8 THE COURT: Thanks everyone. He is
9 remanded, and we are adjourned. (Hearing concluded at
10 12:32 p.m.)

11 - - - - -

12 C E R T I F I C A T E

13 I, George J. Staiduhar, Official Court
14 Reporter in and for the United States District Court,
15 for the Northern District of Ohio, Eastern Division,
16 do hereby certify that the foregoing is a true
17 and correct transcript of the proceedings herein.

18
19
20
21 s/George J. Staiduhar
22 George J. Staiduhar,
Official Court Reporter

23 U.S. District Court
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